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SOUTHERN DISTRICT OF CALIFORNIA
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SEYFARTH SHAW LLP
Mark P. Grajski (SBN 178050)
Samuel T. McAdam (SBN 186084)
Alfred L. Sanderson, Jr. (SBN 186071
400 Capitol Mall, Suite 2350
Sacramento, California 95814-4428
Telephone: (916) 448-0159
Facsimile: (916) 558-4839

Attorneys for Defendants
SPHERION ATLANTIC ENTERPRISES LLC

VIA FAX

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PHILIP J. MARTINET, Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public, Plaintiff, v. SPHERION ATLANTIC ENTERPRISES LLC, a Delaware Limited Liability Company; and DOES 1 through 50, inclusive, Defendant.	Case No. '07 CV 2178 W (AJB) **NOTICE OF REMOVAL OF CIVIL ACTION TO THE UNITED STATES DISTRICT COURT** Superior Court of California, County of San Diego Case Number: 37-2007-00075612-CU-OE-CTL Complaint Filed: September 25, 2007

TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA AND TO PLAINTIFF AND HIS COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Spherion Atlantic Enterprises LLC, ("Spherion" or "Defendant"), hereby removes the above-captioned action from the Superior Court of the State of California for the County of San Diego to the United States District Court for the Southern District of California, asserting that this Court has jurisdiction over the action pursuant to the Class Action Fairness Act of 2005 ("CAFA"), based upon the following grounds.

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1. This removal involves an action that was filed in the Superior Court of the State of California for the County of San Diego, entitled *Philip J. Martinet v. Spherion Atlantic Enterprises, LLC*, Case No. 37-2007-00075612-CU-OE-CTL. (A true and correct copy of the Complaint in this action is attached hereto as Exhibit A).

2. The Complaint purports to assert eight claims for relief against Spherion stemming from Plaintiff Philip Martinet's employment with Defendant and its alleged failure to observe, as to Plaintiff and the purported class of similarly situated individuals,[1] requirements set forth in the California Labor Code – sections 204 and 221 (unlawful deductions of earned wages); sections 510 and 1194 (failure to pay overtime); sections 226.7, 512 and Cal. Code Regs., Title 8 Section 11040 (failure to provide meal breaks or compensation in lieu thereof); section 226.7 and Cal. Code Regs., Title 8 Section 11040 (failure to provide rest periods or compensation in lieu thereof); section 2802 (failure to reimburse for reasonable business expenses); sections 226 and 226.3 (failure to provide properly itemized wage statements); sections 201-203 (failure to pay compensation at time of termination); and Business and Professions Code Section 17200 et seq. (unlawful and unfair business practices).

3. The Complaint was filed on September 25, 2007. Spherion has not been served with the Summons and Complaint. Removal statute does not run until a party has been formally served with the summons and complaint under the applicable state law. (*Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.* (1999) 526 U.S. 344, 347-48.)

4. Spherion filed its Answer to the Complaint in State Court on November 13, 2007. (A true and correct copy of Spherion's Answer is attached hereto as Exhibit B.) Spherion has not filed any other pleadings or papers in this action prior to this notice.

5. This Notice of Removal is timely as it is filed within thirty (30) days of service of process of the Summons and Complaint. (28 U.S.C. § 1446(b).) By appearing in the State Court action, effective on November 13, 2007, Spherion has waived service of the summons and

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[1] Spherion disputes, and reserves the right to contest at the appropriate time, Plaintiff's allegations that this action can properly proceed as a class action.

complaint and has filed this Notice of Removal within 30 days of filing its Answer in the State Court action. (*Ghiradelli v. Greene*, (1880) 56 C 629.) Spherion has not secured the consent of the "DOE" Defendants before removing this action because Spherion does not know the identity of the "DOE" Defendants and has no reason to believe that any of them have been properly served or have voluntarily appeared in this action. In addition, pursuant to CAFA, Spherion need not obtain the consent of any other defendant to remove this action. (28 U.S.C. § 1453(b).)

6. The Court has original jurisdiction of this action under CAFA, codified in relevant part in 28 U.S.C. § 1332(d). As set forth below, this action is properly removable, pursuant to the provisions of 28 U.S.C. § 1441(a), as the amount in controversy exceeds $5,000,000, exclusive of interest and costs, and is a class action in which at least one class member is a citizen of a state different from that of Spherion.

7. Plaintiff alleges that he was employed within the County of San Diego, State of California, and alleges that he is a resident of the State of California. (Ex. A, Complaint at ¶ 1.) For diversity of citizenship purposes, a person is a "citizen" of the state in which he is domiciled. (*Kantor v. Wellesly Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983).) Residence is *prima facie* evidence of domicile. (*State Farm Mut. Auto Ins. Co. v. Dyer*, 29 F.3d 514, 520 (10th Cir. 1994).) Accordingly, Spherion is informed and believes, and on that basis alleges, that California is the state in which Plaintiff is domiciled and, therefore, Plaintiff is, and was at the commencement of this civil action, a citizen of California.

8. Pursuant to 28 U.S.C. § 1332(c), "a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business." Spherion is incorporated in the State of Delaware with its principal place of business in the State of Florida. Spherion is a citizen of Delaware and Florida. Spherion is not now, and was not at the time of the filing of the Complaint, a citizen of the State of California within the meaning of the removal statutes.

9. Pursuant to 28 U.S.C. § 1441(a), the residence of fictitious and unknown defendants should be disregarded for purposes of establishing removal jurisdiction under 28 U.S.C. § 1332. (*Fristos v. Reynolds Metals Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980) (unnamed defendants are not required to join in a removal petition).) Thus, the existence of Doe Defendants one through fifty inclusive, does not deprive this Court of jurisdiction. (*Albrego v. Dow Chemical Co.*, 443 F.3d 676, 679-680 (9th Cir. 2006) (rule applied in CAFA removal).)

10. The claims of the individual members in a class action are aggregated to determine if the amount in controversy exceeds the sum or value of $5,000,000. (28 U.S.C. § 1332(d)(6).) In addition, Congress intended for federal jurisdiction to be appropriate under CAFA "if the value of the matter in litigation exceeds $5,000,000 either from the viewpoint of the plaintiff or the viewpoint of the defendant, and regardless of the type of relief sought (e.g., damages, injunctive relief, or declaratory relief)." (Senate Judiciary Committee Report, S. REP. 109-14, at 42.) Moreover, the Senate Judiciary Committee's Report on the final version of CAFA makes clear that any doubts regarding the maintenance of interstate class actions in state or federal court should be resolved in favor of federal jurisdiction. (S. REP. 109-14, at 42-43 ("[I]f a federal court is uncertain about whether 'all matters in controversy' in a purported class action 'do not in the aggregate exceed the sum or value of $5,000,000,' the court should err in favor of exercising jurisdiction over the case . . . . Overall, new section 1332(d) is intended to expand substantially federal court jurisdiction over class actions. Its provisions should be read broadly, with a strong preference that interstate class actions should be heard in a federal court if properly removed by any defendant").)

11. The alleged amount in controversy in this class action exceeds in the aggregate, $5,000,000. The Complaint alleges that there are "at least 50,000 members in the CLASS and at least 10,000 members in the SUBCLASS." (Ex. A, Complaint at ¶¶ 25-26.[2]) The Complaint

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[2] The CLASS is alleged as: "All current and former California-based, hourly, non-exempt employees of Defendant SPHERION ATLANTIC ENTERPRISES LLC who were employed by SPHERION ATLANTIC ENTERPRISES LLIC between September 25, 2003 and the present (hereinafter, "the CLASS")."

seeks payment of wages, overtime wages, compensation for meal breaks, compensation for rest periods, compensation for business expenses, penalties, and statutory damages. (Ex. A, Complaint ¶¶ 13-23.)

12. Plaintiff Martinet was paid a wage of $20 per hour while working for Spherion. Plaintiff Martinet alleges that his claims are typical of the claims of all members of the CLASS and SUBCLASS. (Ex. A, Complaint ¶27.) Therefore, in calculating the amount in controversy Plaintiff Martinet's wage will be used in the calculations.

13. Plaintiff's Complaint alleges in his first cause of action that Defendant unlawfully deducted wages from the putative class's pay in violation of Labor Code § 221. (Ex. A, Complaint at ¶ 32.) Plaintiff seeks compensation for unpaid wages, pre-judgment interest, attorneys' fees and costs. (Ex. A, Complaint ¶ 35.) A reasonable estimate of the amount in controversy for Plaintiff's allegation of unlawfully deducted wages is $1,000,000. This total was reached by multiplying the estimated number of putative class members for the CLASS – 50,000 - by $20, one hour of pay at Plaintiff Martinet's wage.

14. Plaintiff's Complaint alleges in his second cause of action that Defendant failed to pay overtime wages to the putative class in violation of Labor Code § 510. (Ex. A, Complaint ¶ 38.) Plaintiff seeks compensation equal to the unpaid overtime wages, prejudgment interest, attorneys' fees and costs. (Ex. A, Complaint ¶ 39.) A reasonable estimate of the amount in controversy for Plaintiff's allegation of failure to pay overtime is $1,500,000. This total was reached by multiplying the estimate number of putative class members for the CLASS – 50,000 – by $30, one hour of overtime pay at Plaintiff Martinet's overtime rate of pay.

15. Plaintiff's Complaint alleges in his third cause of action that Defendant failed to allow members of the putative class to take meal periods in violation of Labor Code § 226.7.

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[1] The SUBCLASS is alleged as: "All former California based, hourly, non-exempt employees of Defendant SPHERION ATLANTIC ENTERPRISES LLC who separated their employment with SPHERION ATLANTIC ENTERPRISES LLC between September 25, 2004 and the present (hereinafter, "the SUBCLASS")."

(Ex. A, Complaint at ¶ 41.) Plaintiff seeks compensation in the form of additional wages for each work shift lasting more than five hours during which members of the putative class were not provided with thirty-minute meal periods. (Ex. A, Complaint at ¶¶ 43-44.) A reasonable estimate of the amount in controversy for Plaintiff's allegations of Defendant's failure to provide meal breaks is $1,000,000. This total was reached by multiplying the estimated number of putative class members for the CLASS – 50,000 – by $20, one hour of pay for Plaintiff Martinet.

16. Plaintiff's Complaint alleges in his fourth cause of action that Defendant failed to allow members of the putative class to take rest periods in violation of Labor Code § 226.7. (Ex. A, Complaint at ¶ 46.) Plaintiff seeks compensation in the form of additional wages for each work period lasting four hours during which members of the putative class were not provided with ten-minute rest periods. (Ex. A, Complaint at ¶¶ 47-48.) A reasonable estimate of the amount in controversy for Plaintiff's allegations of Defendant's failure to provide rest breaks is $1,000,000. This total was reached by multiplying the estimated number of putative class members for the CLASS – 50,000 – by $20, one hour of pay for Plaintiff Martinet.

17. Plaintiff's Complaint alleges in his fifth cause of action that Defendant failed to reimburse the putative class for reasonable business expenses in violation of Labor Code § 2802. (Ex. A, Complaint at ¶ 51.) Plaintiff seeks recovery for the class of the class's un-reimbursed expenditures, losses, interest thereon and attorneys' fees and costs. (Ex. A, Complaint at ¶52.) A reasonable estimate of the amount in controversy for Plaintiff's allegations of Defendant's failure to reimburse the class for business expenses is $1,000,000. This total was reached by multiplying the estimated number of putative class members for the CLASS – 50,000 – by $20, one hour of pay for Plaintiff Martinet.

18. Plaintiff's Complaint alleges in his sixth cause of action that Defendant failed to provide the putative class with itemized statements at the time of the payment of wages that recorded or documented expenses deducted from class members earnings, in violation of Labor Code § 226. (Ex. A, Complaint ¶ 55.) Plaintiff seeks recovery for the class either the greater of

$50 per employee for the initial pay period in which the violation occurred, and $100 per employee for each subsequent violation, but not exceeding in the aggregate a penalty of $4,000 per employee. (Ex. A, Complaint ¶57.) A reasonable estimate of the amount in controversy for Plaintiff's allegations of Defendant's failure to provide an accurate itemized pay stub is $2,500,000. This total was reached by multiplying the estimated number of putative class members for the CLASS – 50,000 – by $50, the penalty for an initial violation of Labor Code § 226.

19. Plaintiff's Complaint alleges in his seventh cause of action that Defendant failed to timely pay subclass members their final wages upon their separation of employment in violation of Labor Code § 201. (Ex. A, Complaint at ¶¶ 13, 59-60.) Plaintiff seeks "waiting time" penalties, pursuant to California Labor Code section 203, on behalf of each of the putative subclass members, in an amount up to 30 days of wages for each putative subclass member. (Ex. A, Complaint ¶¶59-60, 26-29.) A reasonable estimate of the amount in controversy for Plaintiff's allegations of Defendant's failure to timely pay subclass members their final wages is $48,000,000. This total was reached by multiplying the estimate number of putative subclass members for the SUBCLASS – 10,000 – by $4,800, the estimated daily wage of $160 multiplied by the 30 days waiting time penalty period.

20. The Complaint also alleges that putative class members are entitled to recover attorneys' fees under Labor Code § 218.5. (Ex. A, Complaint ¶¶ 14, 35, 39, 52.) Requests for attorneys' fees must be taken into account in ascertaining the amount in controversy. (*Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) (claims for statutory attorneys' fees are to be included in amount in controversy, regardless of whether award is discretionary or mandatory; *Lowdermilk v. United States Bank Nat'l Assoc.*, 479 F.3d 994, 1000 (9th Cir. 2007) (rule applied in CAFA removal).)

21. Thus, although Defendant denies Plaintiff's allegations or that he or the class that he purports to represent is entitled to relief for which he has prayed, based on Plaintiff's

allegations and prayer for relief, the amount in controversy is $56,000,000. This amount exceeds the $5,000,000 threshold set forth under 28 U.S.C. § 1332(d)(2) for removal jurisdiction.

22. Because diversity of citizenship exists – Plaintiff being a citizen of the State of California and Spherion being a citizen of the States of Delaware and Florida – and because the amount in controversy exceeds $5,000,000, this Court has original jurisdiction of the action pursuant to 28 U.S.C. § 1332(d)(2). This action is therefore a proper one for removal from this Court.

23. Venue lies in the United States District Court for the Southern District of California, pursuant to 28 U.S.C. §§ 1441, 1446(a), and 84(c)(2). This action originally was brought in the Superior Court of the State of California, County of San Diego, which is located within the Southern District of the State of California. Therefore, venue is proper because it is the "district and division embracing the place where such action is pending." (28 U.S.C. § 1441(a).)

24. A true and correct copy of this Notice of Removal will be promptly served on Plaintiff and filed with the Clerk of the Superior Court of the State of California for the County of San Diego, as required under 28 U.S.C. § 1446(d).

WHEREFORE, Spherion prays that the above action pending before the Superior Court of the State of California for the County of San Diego be removed to the United States District Court for the Southern District of California.

DATED: November 13, 2007

SEYFARTH SHAW LLP

By: [signature]
Samuel T. McAdam
Alfred L. Sanderson, Jr.
Attorneys for Defendant
SPHERION ATLANTIC ENTERPRISES LLC

EXHIBIT A

Derek J. Emge (CSB No. 161105)
EMGE & ASSOCIATES
550 West C Street, Ste. 1600
San Diego, CA 92101
Telephone (619) 595-1400
Facsimile (619) 595-1480

David A. Huch (CSB No. 222892)
LAW OFFICES OF DAVID A. HUCH
7040 Avenida Encinas, Suite 104
Carlsbad, CA 92011-4654
Telephone (760) 402-9528
Facsimile (760) 683-3245

Attorneys for Plaintiff, PHILIP J. MARTINET, Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

PHILIP J. MARTINET, Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public, Plaintiff, v. SPHERION ATLANTIC ENTERPRISES LLC, a Delaware Limited Liability Company; and DOES 1 through 50, inclusive, Defendants.	Case No. 37-2007-00075812-CU-OE-CTL **CLASS ACTION** **CLASS ACTION COMPLAINT FOR COMPENSATORY DAMAGES, INJUNCTIVE RELIEF, RESTITUTION, & DISGORGEMENT OF PROFITS:** **1. Unlawful Deductions of Earned Wages In Violation of Labor Code §§ 204 & 221;** **2. Failure to Pay Overtime In Violation of Labor Code §§ 510 & 1194;** **3. Failure to Provide Meal Breaks, Or Compensation in Lieu Thereof (Labor Code §§ 226.7, 512; Cal. Code Regs., Title 8 § 11040);** **4. Failure to Provide Rest Periods, Or Compensation in Lieu Thereof (Labor Code § 226.7; Cal. Code Regs., Title 8 § 11040);**

5. **Failure to Reimburse for Reasonable Business Expenses (Labor Code § 2802);**
6. **Failure to Provide Properly Itemized Wage Statements (Labor Code § 226, 226.3);**
7. **Failure to Pay Compensation at Time of Termination In Violation of Labor Code §§ 201-203;**
8. **Unlawful and Unfair Business Practices (Business & Professions Code § 17200 et seq.)**

Plaintiff, PHILIP J. MARTINET, on behalf of himself, all others similarly situated, and on behalf of the general public, alleges causes of action against defendants, and each of them, as follows:

GENERAL ALLEGATIONS AND IDENTIFICATION OF THE PARTIES

1. Plaintiff, PHILIP J. MARTINET ("PLAINTIFF"), is a competent adult who resides in the City of San Diego, County of San Diego, State of California. From his date of hire, at or around July 1, 2007 to until his date of separation of employment at or around August 18, 2007, PLAINTIFF was employed as a non-exempt, hourly employee by Defendant SPHERION ATLANTIC ENTERPRISES LLC in the County of San Diego, State of California.

2. PLAINTIFF is informed and believes that Defendant SPHERION ATLANTIC ENTERPRISES LLC is a Delaware limited liability company with its principal place of business in Fort Lauderdale, Florida. At all times mentioned herein, Defendant SPHERION ATLANTIC ENTERPRISES LLC was doing business in the State of California through its ownership and operation of numerous recruiting and staffing offices throughout California, as well as recruiting and employing thousands of California employees. PLAINTIFF is informed and believes, and thereon alleges, that at all relevant times, SPHERION ATLANTIC ENTERPRISES LLC employed PLAINITFF and exercised control over PLAINTIFF's wages, hours and working conditions.

3. PLAINTIFF does not know the true names and capacities of Defendants sued herein as DOES 1 through 50, inclusive, and will amend this Complaint to set forth the true names and capacities of said defendants, along with the appropriate charging allegations when the same have been ascertained.

4. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitiously named defendants was in some manner legally responsible for the actionable and unlawful actions, policies and practices as alleged herein. PLAINTIFF will amend this Complaint to set forth the true names and capacities of said defendants, along with the appropriate charging allegations when the same have been ascertained.

5. PLAINTIFF is informed and believes, and thereon alleges, that at all times mentioned herein, all Defendants, and each of them, were acting as the agent and/or employee of each remaining co-defendant, and were acting with permission and consent of each other, and within the course and scope of said agency and/or employment. PLAINTIFF is further informed and believes that each co-defendant, by and through its officers, directors or managing agents ratified, authorized and approved, expressly or implicitly, all of the conduct alleged herein.

6. When in this Complaint reference is made to any act of the "DEFENDANT," such shall be deemed to mean that officers, directors, agents, employees, or representatives of the Defendants named in this lawsuit committed or authorized such acts, or failed and omitted to adequately supervise or properly control or direct their employees while engaged in the management, direction, operation or control of the affairs of the Defendants and did so while acting within the scope of their employment or agency.

7. When in this Complaint reference is made to any act by a "DEFENDANT" or "Defendants" or "co-defendants," such allegations and reference shall also be deemed to mean the acts and failures to act of each of the named Defendants acting individually, jointly and severally.

JURISDICTION AND VENUE

8. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

9. This Court has jurisdiction over all causes of action asserted herein pursuant to California Constitution, Article VI, Sec. 10, because this case is a cause not given by statute to other trial courts.

10. This Court has jurisdiction over DEFENDANT because each co-defendant is a corporation, limited liability company or other business entity authorized to do business in the State of California and registered with the California Secretary of State to do sufficient business with sufficient minimum contacts in California, and/or otherwise intentionally avail itself of the California market through the ownership and operation of recruiting and staffing offices throughout the State of California, to render the exercise of jurisdiction by the California courts consistent with traditional notions of fair play and substantial justice.

11. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. DEFENDANT'S actionable and unlawful employment practices as to PLAINTIFF occurred in the County of San Diego, State of California.

12. The Class Action Fairness Act [28 U.S.C.S. § 1332(d)] ("CAFA") does not apply to the present class action Complaint. The present Complaint is brought solely on behalf of DEFENDANT'S *California-based* employees. As a result, PLAINTIFF is informed and believes, and thereon alleges, that under subsection (d)(4) of CAFA, a federal district court "shall decline to exercise jurisdiction" of the present matter due to the following: greater than two-thirds of the members of all proposed plaintiff class in the aggregate are citizens of the State of California; and all Defendants are Defendants from whom significant relief is sought by members of the plaintiff class, whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class, and who are citizens of the State of California; and the principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State of California; and two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State of California.

STATUTORY AND REGULATORY BACKGROUND

A. California Labor Code Sections 201 through 203

13. California Labor Code Section 201 requires an employer who discharges an employee to pay compensation due and owing said employee immediately upon discharge. California Labor Code Section 202 requires an employer to promptly pay compensation due and owing an employee within 72 hours of that employee's separation of employment by resignation. California Labor Code Section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation as required pursuant to California Labor Code Sections 201 and 202, said employer is liable to said employee for waiting time penalties.

B. California Labor Code Sections 218, 218.5 & 218.6

14. Labor Code Section 218 provides a private right of action for employees to sue directly for any wages or penalty due to him/her under this article of the Labor Code. Labor Code Sections 218.5 and 218.6 provide for the recovery of attorneys' fees, costs and pre-judgment interest to the prevailing party in the event of an action to recover wages brought by private individuals.

C. California Labor Code Section 221

15. Labor Code Section 221 prohibits an employer from receiving from an employee any wage paid by the employer to the employee either by unauthorized deductions of employees' wages or recovery after payment of the wage. In referring to "wages" paid, Section 221 prohibits an employer from collecting or receiving wages "that have already been earned by performance of agreed-upon requirements." (*Steinhebel v. Los Angeles Times Communications*, (2005) 126 Cal.App.4th 696, 707.)

D. California Labor Code Section 226

16. Labor Code Section 226 requires an employer to keep accurate, itemized pay statements. Under California law, the precise, actual number of hours and minutes worked by a non-exempt employee must be accurately itemized on each pay statement. If an employer knowingly and intentionally fails to comply with this section, it is liable for the greater of all actual

damages or $50 for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of $4,000 per employee.

E. California Labor Code Section 226.7

17. Labor Code Section 226.7 provides that no employer shall require any non-exempt employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission. This section also provides that if an employer fails to provide a non-exempt employee a 30 minute meal period and/or 10 minute rest periods in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided and one additional hour of pay at the employee's regular rate of compensation for each work day that a rest period is not provided.

F. California Labor Code Section 510

18. Labor Code Section 510 requires the payment of overtime to nonexempt employees at the rate of 1 ½ times their regular rate of pay for all hours worked in excess of eight (8) hours per day and all hours worked in excess of forty (40) hours per workweek, and payment of overtime to nonexempt employees at the rate of two times the regular rate of pay for all hours in excess of twelve (12) hours per day and all hours worked excess of eight hours on the seventh day worked in any work week.

G. California Labor Code Section 512

19. Labor Code Section 512 provides that an employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be

waived by mutual consent of the employer and the employee only if the first meal period was not waived.

H. Industrial Wage Order 4-2001 (Title 8, California Code of Regulations, § 11040)

20. Industrial Wage Order 4-2001 (and its predecessors), governing "Professional, Technical, Clerical, Mechanical and Similar Occupations," is the applicable wage order in this action. Industrial Wage Order 4-2001, which has been enacted into California's regulatory law as Title 8, California Code of Regulations, § 11040, provides that employers must keep accurate time records showing when employees begin and end each meal period [subsection (7)(A)(3)]. In addition, the wage order provides that every employer shall permit all employees to take rest periods in the middle of each work period. The authorized rest period is to be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. [subsection (12)(A)]. The regulation also defines an "employer" as "any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person."

I. California Business & Professions Code Section 17200 et seq.

21. California Business & Professions Code § 17200 defines unfair competition to include "unlawful, unfair or fraudulent business practices."

22. California Business & Professions Code § 17203 provides that "[t]he court may make such orders or judgments...as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore any person in interest any money or property, real or personal, which may have been acquired by means of unfair competition."

23. California Business & Professions Code § 17204 provides for suits for injunctive relief, restitution and disgorgement of profits.

CLASS ACTION ALLEGATIONS

24. PLAINTIFF brings the First through Eighth Causes of Action of this suit as a class action pursuant to California Code of Civil Procedure § 382, on behalf of all individuals employed by DEFENDANT in the State of California in hourly, non-exempt positions during the relevant time period. This action is also brought for the benefit of the general public.

25. The putative classes PLAINTIFF will seek to certify are currently composed of and defined as follows:

a. **All current and former California-based, hourly, non-exempt employees of Defendant SPHERION ATLANTIC ENTERPRISES LLC who were employed by SPHERION ATLANTIC ENTERPRISES LLC between September 25, 2003 and the present (hereinafter, "the CLASS").**

b. **All former California-based, hourly, non-exempt employees of Defendant SPHERION ATLANTIC ENTERPRISES LLC who separated their employment with SPHERION ATLANTIC ENTERPRISES LLC between September 25, 2004 and the present (hereinafter, "the SUBCLASS.")**

26. Numerosity: The potential quantity of members of the CLASS and SUBCLASS as defined is so numerous that joinder of all members would be unfeasible and unpractical. The disposition of their claims through this class action will benefit both the parties and this Court. The quantity of members of the CLASS and SUBCLASS is currently unknown to PLAINTIFF; however, it is estimated that there are at least 50,000 members in the CLASS and at least 10,000 members in the SUBCLASS. The quantity and identity of such membership is readily ascertainable via inspection of DEFENDANT'S records.

27. Typicality: The claims of PLAINTIFF are typical of the claims of all members of the CLASS and SUBCLASS mentioned herein because all members of the CLASS and SUBCLASS sustained injuries and damages arising out of DEFENDANT'S common course of

conduct in violation of California wage and hour law, and the injuries and damages of all members of the CLASS and SUBCLASS were caused by DEFENDANT'S wrongful conduct in violation of California statutory and regulatory law, as alleged herein.

28. Adequacy: PLAINTIFF is an adequate representative of the CLASS and SUBCLASS and will fairly protect the interests of the members of the CLASS and SUBCLASS, and has no interests antagonistic to the members of the CLASS and SUBCLASS, and will vigorously pursue this suit via attorneys who are competent, skilled and experienced in litigating matters of this type.

29. Superiority. The nature of this action and the nature of the laws available to PLAINTIFF make the use of the class action format a particularly effective and appropriate procedure to afford relief to PLAINTIFF for the wrongs alleged herein:

a. This case involves large corporate Defendants and a large number of individual class members with common issues of law and fact. According to DEFENDANT'S website, www.spherion.com, DEFENDANT employs "[a]pproximately 300,000" employees "making Spherion one of the top employers in North America;"

b. If each individual member of the CLASS and SUBCLASS were required to file an individual lawsuit, the large corporate Defendant would necessarily gain an unconscionable advantage because DEFENDANT would be able to exploit and overwhelm the limited resources of each member of the CLASS and SUBCLASS with DEFENDANT'S vastly superior financial and legal resources.

c. Requiring each individual member of the CLASS and SUBCLASS to pursue an individual remedy would also discourage the assertion of lawful claims by the members of the CLASS and SUBCLASS who would be disinclined to pursue an action against DEFENDANT because of an appreciable and justifiable fear of retaliation and permanent damage to their lives, careers and well being;

d. Proof of a common business practice or factual pattern, of which the members of the CLASS and SUBCLASS experienced, is representative of the CLASS and SUBCLASS herein and will establish the right of each of the members of CLASS and SUBCLASS to recover on the causes of action alleged herein;

e. The prosecution of separate actions by the individual members of the CLASS and SUBCLASS, even if possible, would create a substantial risk of inconsistent and varying verdicts or adjudications with respect to the individual members of the CLASS and SUBCLASS against DEFENDANT, which would establish potentially incompatible standards of conduct for DEFENDANT and/or legal determinations with respect to individual members of the CLASS and SUBCLASS.

30. Existence and Predominance of Common Questions of Fact and Law:

There are common questions of fact and law as to the members of the CLASS and SUBCLASS, which predominate over questions affecting only individual members of the CLASS and SUBCLASS including, without limitation:

a. Whether the members of the CLASS were subjected to unauthorized and illegal deduction of their earned wages;

b. Whether the members of the CLASS were expected, required, permitted and/or suffered to work overtime hours on a regular basis;

c. Whether the members of the CLASS were paid overtime compensation in accordance with California statutory and regulatory law;

d. Whether the members of the CLASS were provided with 30-minute meal breaks;

e. Whether DEFENDANT has failed to keep accurate time records showing when members of the CLASS begin and end each meal break;

f. Whether the members of the CLASS were provided with 10-minute rest periods;

g. Whether the members of the SUBCLASS received all compensation owed and due at the time of their separation of employment;

h. Whether the members of the SUBCLASS are entitled to seek recovery of penalties pursuant to Labor Code § 203;

i. Whether DEFEDANT properly itemized the wage statements of the members of the CLASS;

j. Whether DEFENDANT'S conduct constituted unfair or unlawful business practices within the meaning of Business & Professions Code § 17200 *et seq.*;

k. Whether the members of the CLASS and SUBCLASS are entitled to compensatory damages, and if so, the means of measuring such damages;

l. Whether the members of the CLASS and SUBCLASS are entitled to injunctive relief;

m. Whether the members of the CLASS and SUBCLASS are entitled to restitution;

n. Whether the members of the CLASS and SUBCLASS are entitled to disgorgement of profits;

o. Whether DEFENDANT is liable for pre-judgment interest; and

p. Whether DEFENDANT is liable for attorneys' fees and costs.

FIRST CAUSE OF ACTION
(Unlawful Deductions of Wages Earned in Violation of
California Labor Code Sections 204 & 221)

(On Behalf of the CLASS)

31. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

32. PLAINTIFF alleges, on the basis of information and belief, that at all relevant times DEFENDANT has continuously engaged in the regular practice of deducting, collecting and/or receiving wages earned by members of the and CLASS. As a result, members of the CLASS have not been paid all wages earned in performing work for DEFENDANT.

33. PLAINTIFF alleges, on the basis of information and belief, that DEFENDANT was not authorized, required nor empowered to deduct, collect and/or receive wages from the members of the CLASS pursuant to state or federal law, nor express authorization of the members of the and CLASS, in writing, to cover insurance premiums, hospital or medical dues, nor pursuant to an enforceable and lawful wage agreement or statute.

34. PLAINTIFF alleges, on the basis of information and belief, that DEFENDANT'S regular practice of deducting, collecting and/or receiving wages earned by the members of the CLASS violates California Labor Code sections 204 and 221.

35. As a result of the actions of DEFENDANT, in deducting, collecting and/or receiving wages earned by the members of the CLASS, members of the CLASS were damaged by not receiving wages that they should have received. Members of the CLASS are therefore entitled to compensation in an amount to be proven at trial for unpaid wages, pre-judgment interest, attorneys' fees and costs pursuant to Labor Code sections 218, 218.5 & 218.6.

SECOND CAUSE OF ACTION
(Failure to Pay Overtime Compensation in Violation of
California Labor Code Sections 510 & 1194)

(On Behalf of the CLASS)

36. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

37. PLAINTIFF alleges, on the basis of information and belief, that at all relevant times DEFENDANT has continuously engaged in the regular practice of requiring, suffering or permitting members of the CLASS to work hours in excess of eight hours per day and/or 40 hours per week.

38. The laws of the State of California require employers, such as DEFENDANT, to pay overtime compensation to all non-exempt employees. PLAINTIFF alleges, on the basis of information and belief, that members of the CLASS are not exempt from overtime pay requirements under California law. PLAINTIFF further alleges that all members of the CLASS have been classified by DEFENDANT as non-exempt, hourly employees.

39. As a result of the actions of DEFENDANT in failing and/or refusing to pay overtime compensation, members of the CLASS were damaged by not receiving overtime compensation which they should have received, but did not receive. Members of the CLASS are therefore entitled to compensation in an amount to be proven at trial for unpaid overtime, pre-judgment interest, attorneys' fees and costs pursuant to Labor Code section 1194.

THIRD CAUSE OF ACTION
(Failure to Provide 30-Minute Employee Meal Period)

(On Behalf of the CLASS)

40. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

41. PLAINTIFF alleges, on the basis of information and belief, that within each of the four years prior to the commencement of this action, DEFENDANT promulgated and enforced policies under which members of the CLASS regularly worked more than five hours in a day without being provided with a thirty-minute meal period during which members of the CLASS

were relieved of all of their respective work duties. DEFENDANT also promulgated and enforced policies under which members of the and CLASS regularly worked more than ten hours in a day without being provided with a second thirty-minute meal period during which members of the CLASS were relieved of all of their respective work duties.

42. PLAINTIFF alleges, on the basis of information and belief, that at all relevant times, DEFENDANT has failed to maintain accurate records of when members of the CLASS begin and end each meal period.

43. PLAINTIFF alleges, on the basis of information and belief, that members of the CLASS are entitled to additional wages pursuant to California Labor Code Section 226.7 for each work shift lasting more than five hours during which members of the CLASS were not provided with one or more thirty minute meal periods.

44. As a result of DEFENDANT'S conduct as alleged herein, members of the CLASS have suffered harm and monetary damages, in an amount to be ascertained at trial.

FOURTH CAUSE OF ACTION

(Failure to Allow 10-Minute Employee Rest Periods)

(On Behalf of the CLASS)

45. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

46. PLAINTIFF alleges, on the basis of information and belief, that within each of the four years prior to the commencement of this action, DEFENDANT promulgated and enforced policies under which members of the CLASS regularly worked more than four hours per day without being allowed one or more paid rest periods of at least ten minutes during which the members of the CLASS were relieved of all of their respective work duties.

47. PLAINTIFF alleges, on the basis of information and belief, that members of the CLASS are entitled to additional wages pursuant to California Labor Code Section 226.7 for each four hour work period during which members of the CLASS were not provided with one or more ten minute rest periods.

48. As a result of DEFENDANT'S conduct as alleged herein, members of the CLASS have suffered harm and monetary damages, in an amount to be ascertained at trial.

FIFTH CAUSE OF ACTION

(Failure to Reimburse for Reasonable Business Expenses in Violation of
Labor Code § 2802; Cal. Code Regs., Title 8 § 11040 sections 8 & 9)

(On Behalf of the CLASS)

49. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

50. Labor Code Section 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. Title 8 CCR § 11010(8) provides that "No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is cause by a dishonest or willful act, or by the gross negligence of the employee."

51. During the applicable statutory period, PLAINTIFF and the members of the CLASS incurred necessary expenditures and losses in direct consequence of the discharge of their employment duties and their obedience to the directions of DEFENDANT, including but not limited to travel expenses, gas charges, mileage, cell phone charges, laptop computer usage, and other similar expenditures.

52. PLAINTIFF is informed and believes that pursuant to California Labor Code § 2802 and Title 8 CCR § 11040(8) & (9), PLAINTIFF and the members of the CLASS are entitled to recover their un-reimbursed expenditures and losses, interest thereon and attorneys' fees and costs, in amounts to be proven at trial.

SIXTH CAUSE OF ACTION

(Failure to Provide Properly Itemized Wage Statements in Violation of Labor Code §§ 226 and 226.3; Cal. Code Regs., Title 8 § 11040 section 7)

(On Behalf of the CLASS)

53. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

54. Labor Code Section 226 requires an employer to keep accurate, itemized pay statements. Under California law, gross wages earned, the precise, actual number of hours and minutes worked by a non-exempt employee, all deductions, net wages earned, inclusive dates of the pay period, the name of the employee, the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period must be accurately itemized on each pay statement. Furthermore, the deductions made from payment of wages must be recorded, properly dated, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

55. During the applicable statutory period, DEFENDANT has routinely failed to provide the members of the CLASS, at the time of each payment of wages, an itemized statement in writing showing the requirements of Labor Code § 226 and section 7 of Title 8 CCR § 11040. DEFENDANT'S failure to provide itemized statements to the members of the CLASS has been knowing and intentional and was in clear violation of Labor Code § 226(a). In direct violation of California law, DEFENDANT has refused to provide the members of the CLASS with any record or documentation of expenses deducted from such employees' earnings.

56. The members of the CLASS have suffered injuries as a result of the knowing and intentional failure of DEFENDANT to comply with Labor Code § 226(a) and Title 8 CCR § 11040(7), in that DEFENDANT'S failure to provide Class Members with an itemized wage statement made it impossible for the members of the CLASS to be aware that unlawful deductions were being made from their earnings, that they were not being paid all wages earned, and that in

certain instances their wages fell below the statutory hourly minimum wage and overtime wage rates.

57. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT'S knowing and intentional failure to furnish the members of the CLASS with itemized wage statements, as alleged above, violated Labor Code § 226(a), as well as Title 8 CCR § 11040(7). Labor Code § 226(e) entitles PLAINTIFF and the members of the CLASS to recover the greater of their actual damages caused by DEFENDANT'S violations, or $50 per employee for the initial pay period in which the violation occurred, and $100 per employee for each violation in subsequent pay periods, not exceeding an aggregate penalty of $4,000 per employee.

SEVENTH CAUSE OF ACTION

(Failure to Pay Compensation at the Time of Termination in Violation of California Labor Code Sections 201-203)

(On Behalf of the SUBCLASS)

58. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

59. PLAINTIFF alleges, on the basis of information and belief, that DEFENDANT has willfully failed and have refused to pay all compensation and wages due to members of the members of the SUBCLASS upon their separation of employment.

60. DEFENDANT'S failure to timely pay compensation and wages to members of the members of the SUBCLASS at the time of their separation of employment is willful. As a result, DEFENDANT is liable to members of the members of the SUBCLASS for waiting time penalties under California Labor Code Section 203 in an amount to be ascertained at trial.

EIGHTH CAUSE OF ACTION

(Unlawful and Unfair Business Practices: Business & Professions Code §§ 17200 *et seq.*)

(On behalf of PLAINTIFF, the CLASS, and the General Public)

61. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

62. Within each of the four years prior to the commencement of this action, PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT has unlawfully failed to pay hourly wages and overtime wages to Class Members, including Plaintiff, in violation of Labor Code §§ 204, 221 510, 1194, 1197 and 1197.1; unlawfully failed to provide meal breaks, or compensation in lieu thereof, to Class Members, including PLAINTIFF, in violation of Labor Code §§ 226.7 and 512; unlawfully failed to provide rest periods, or compensation in lieu thereof, to Class Members, including PLAINTIFF, in violation of Labor Code § 226.7; unlawfully failed to reimburse Class Members, including PLAINTIFF, for reasonable business expenditures in violation of Labor Code § 2802; and unlawfully failed to provide properly itemized wage statements to Class Members, including PLAINTIFF, in violation of Labor Code § 226.

63. By committing the alleged acts and/or omissions as described in this Complaint, DEFENDANT has engaged, and continue to engage, in unlawful and/or unfair business practices within the meaning of California Business & Professions Code § 17200 *et seq.*

64. PLAINTIFF alleges, on the basis of information and belief, that as a result of DEFENDANT'S alleged acts and/or omissions as described in this Complaint, DEFENDANT has unlawfully earned profits from such unlawful and/or unfair business practices.

65. A request for injunctive relief, restitution and for the disgorgement of unlawfully earned profits is specifically authorized by California Business & Professions Code § 17200 *et seq.* Thus, on behalf of members of the CLASS, and on behalf of the general public, PLAINTIFF seeks injunctive relief, restitution (to members of the CLASS) of all unlawfully withheld funds, and the disgorgement of all unlawfully earned profits (to members of the CLASS) obtained by DEFENDANT as a result of DEFENDANT'S alleged acts and/or omissions as described in this Complaint.

66. PLAINTIFF is informed and believes, and thereon alleges, that unless restrained and ordered to pay restitution and disgorge profits derived from said unfair and unlawful business practices, DEFENDANT will continue to engage in the alleged acts and/or omissions as described in this Complaint.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, on behalf of himself, all others similarly situated, and on behalf of the general public, prays for judgment as follows:

1. That the Court issue an Order certifying the CLASS and SUBCLASS, appointing the named PLAINTIFF as representative of all others similarly situated and appointing the law firm(s) representing the named PLAINTIFF as counsel for members of the CLASS;

As to the First Cause of Action for Unlawfully Deducted Wages on Behalf of the CLASS

2. For compensatory damages according to proof, including all wages due and owing as a result of DEFENDANT'S unlawful deduction of wages earned by members of the CLASS:

3. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 218.6;

4. For attorneys' fees and costs pursuant to Labor Code Section 218.5, or as otherwise permitted by statute;

5. For such other and further relief as the court deems just and proper;

As to the Second Cause of Action for Overtime Compensation on Behalf of the CLASS

6. For compensatory damages according to proof, including all wages due and owing as a result of DEFENDANT'S failure to pay overtime compensation to members of the CLASS;

7. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 1194;

8. For attorneys' fees and costs pursuant to Labor Code Section 1194, or as otherwise permitted by statute;

9. For such other and further relief as the court deems just and proper;

As to the Third Cause of Action for Failure to Allow 30-Minute Employee Meal Periods on Behalf of the CLASS

10. For compensatory damages in the form of additional wages equal to one hour's regular pay for each member of the CLASS for each work shift in which such member worked more than five hours without being permitted to take the required meal period;

11. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 218.6;

12. For attorneys' fees and costs pursuant to Labor Code Section 218.5, or as otherwise permitted by statute;

13. For such other and further relief as the court deems just and proper;

As to the Fourth Cause of Action for Failure to Allow 10-Minute Employee Rest Periods on Behalf of the CLASS

14. For compensatory damages in the form of additional wages equal to one hour's regular pay for each member of the CLASS for each four hour work period in which such member worked without being permitted to a paid rest period;

15. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 218.6;

16. For attorneys' fees and costs pursuant to Labor Code Section 218.5, or as otherwise permitted by statute;

17. For such other and further relief as the court deems just and proper;

As to the Fifth Cause of Action for Indemnification of Employees for Expenditures or Losses in Discharge of Duties or Obedience to Directions on Behalf of the CLASS

18. For compensatory damages according to proof, including but not limited to expenditures, losses, lost wages, earnings and other employee benefits and all other sums of money owed to each member of the CLASS incurred during the proper discharge of their duties for DEFENDANT, or during the course and scope of their employment for DEFENDANT.

19. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289;

20. For attorneys' fees and costs pursuant to Labor Code § 2802 or as otherwise permitted by statute;

21. For such other and further relief as the court deems just and proper;

As to the Sixth Cause of Action for Improperly Itemized Wage Statements on Behalf of the CLASS

22. For compensatory damages or minimum statutory damages of $50 for the first violation and $100 for each subsequent violation pursuant to Labor Code Section 226(e);

23. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 226(e);

24. For attorneys' fees and costs pursuant to Labor Code Section 226(e) or as otherwise permitted by statute;

25 For such other and further relief as the court deems just and proper;

As to the Seventh Cause of Action for Waiting Time Penalties on Behalf of the SUBCLASS

26. For statutory penalties pursuant to Labor Code Section 203;

27. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 218.6;

28. For attorneys' fees and costs pursuant to Labor Code Section 218.5, or as otherwise permitted by statute;

29. For such other and further relief as the court deems just and proper;

As to the Eighth Cause of Action for Unlawful and Unfair Business Practices on Behalf of the CLASS and the General Public

30. For an Order requiring DEFENDANT to identify each of the members of the CLASS by name, home address and home telephone number;

31. For an Order compelling DEFENDANT to restore unpaid wages, expenditures, losses, income and other related benefits (in the form of restitution) to each of the members of the CLASS who have suffered as a result of DEFENDANT'S unlawful and unfair business practices alleged herein;

32. For an order compelling DEFENDANT to disgorge and pay over to each of the members of the CLASS all profits and savings resulting from DEFENDANT'S unlawful and unfair business practices alleged herein;

33. For issuance of a permanent injunction enjoining DEFENDANT from continuing to engage in the unlawful and unfair business practices alleged herein;

34. For interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 204.6;

35. For attorneys' fees and costs pursuant to Labor Code Sections 218.5, 1194 & 2802, Code of Civil Procedure Section 1021.5 and as otherwise permitted by statute;

36. For such other and further relief as the court deems just and proper;

DATED: September 25, 2007

EMGE & ASSOCIATES

Derek J. Emge, Esq.
550 West "C" St., Suite 1600
San Diego, CA 92101
Attorneys for Plaintiff, PHILIP J. MARTINET, Individually, on behalf of all others similarly situated, and on behalf of the general public.

SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
SPHERION ATLANTIC ENTERPRISES LLC, a Delaware Limited Liability Company, and Does 1 through 50, inclusive

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
PHILIP J. MARTINET, Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
San Diego Superior Court
330 West Broadway
San Diego, CA 92101

CASE NUMBER: *(Número del Caso)*: 37-2007-00075612-CU-OE-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Derek J. Emge SBN 161105 (619) 595-1400 (619) 595-1480
Emge & Associates
550 West C Street, Suite 1600

DATE: SEP 25 2007 *(Fecha)*
Clerk, by *(Secretario)* S. LITTLE, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☐ on behalf of *(specify)*:

under:
- ☐ CCP 416.10 (corporation)
- ☐ CCP 416.20 (defunct corporation)
- ☐ CCP 416.40 (association or partnership)
- ☐ CCP 416.60 (minor)
- ☐ CCP 416.70 (conservatee)
- ☐ CCP 416.90 (authorized person)
- ☐ other *(specify)*:

4. ☐ by personal delivery on *(date)*:

Page 1 of 1

EXHIBIT B

SEYFARTH SHAW LLP
Samuel T. McAdam (State Bar No. 186084)
Alfred L. Sanderson, Jr. (State Bar No. 186071)
400 Capitol Mall, Suite 2350
Sacramento, California 95814-4428
Telephone: (916) 448-0159
Facsimile: (916) 558-4839

Attorneys for Defendant
SPHERION ATLANTIC ENTERPRISES LLC

2007 NOV 13 AM 11:36
SAN DIEGO COUNTY, CA

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

PHILIP J. MARTINET, Individually, On Behalf of All Others Similarly Situated, and On Behalf of the General Public, Plaintiff, v. SPHERION ATLANTIC ENTERPRISES LLC, a Delaware Limited Liability Company; and DOES 1 through 50, inclusive, Defendant.	Case No. 37-2007-00075612-CU-OE-CTL **ANSWER OF DEFENDANT SPHERION ATLANTIC ENTERPRISE, LLC TO PLAINTIFF'S UNVERIFIED COMPLAINT** **VIA FAX**

Defendant Spherion Atlantic Enterprises, LLC ("Spherion"), for itself alone and no other defendant, hereby answers the unverified complaint of Plaintiff Philip Martinet ("Plaintiff") as follows:

GENERAL DENIAL

Pursuant to the provisions of California Code of Civil Procedure, section 431.30, Spherion denies, generally and specifically, each and every allegation, statement, matter and each purported cause of action contained in Plaintiff's unverified Complaint, and without limiting the generality of the foregoing, denies generally and specifically that Plaintiff has been damaged in any way at all by reason of any acts or omissions of Spherion.

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AFFIRMATIVE DEFENSES

In further answer to Plaintiff's unverified Complaint, Spherion alleges the following affirmative defenses. In asserting these defenses, Spherion does not assume the burden of proof as to matters that, pursuant to law, are Plaintiff's burden to prove.

FIRST DEFENSE

(Failure To State a Cause of Action)

1. As to Plaintiff's Complaint, or any purported cause of action therein alleged, Plaintiff fails to state facts sufficient to constitute claims upon which relief can be granted against Spherion.

SECOND DEFENSE

(Statute of Limitations)

2. Plaintiff's claims, in whole or in part, are barred by the applicable statutes of limitations, including, but not limited to, Code of Civil Procedure, section 337, 338, 339, and 340 and B&P Code § 17208.

THIRD DEFENSE

(Estoppel)

3. Plaintiff, by his conduct, is estopped to assert any cause of action against Spherion.

FOURTH DEFENSE

(Waiver)

4. Plaintiff's Complaint, and each and every cause of action alleged therein, is barred by the doctrine of waiver.

FIFTH DEFENSE

(Unclean Hands)

5. Plaintiff's Complaint, and each and every cause of action alleged therein, is barred by the doctrine of unclean hands.

SIXTH DEFENSE

(Laches)

6. Plaintiff has delayed inexcusably and unreasonably in the filing of this action causing substantial prejudice to Spherion and, thus, Plaintiff's claims are barred by the equitable doctrine of laches.

SEVENTH DEFENSE

(Res Judicata/Collateral Estoppel)

7. The complaint is barred by the doctrines of res judicata and/or collateral estoppel to the extent that Plaintiff, any class member or other putative beneficiary of this action has asserted in any prior legal or administrative proceeding that he or she was entitled to unpaid overtime, additional payment for meal periods, and or penalties and did not prevail on such claim.

EIGHTH DEFENSE

(No Discharge or Quit)

8. Because the ending of Plaintiff's temporary assignment with Spherion does not qualify as a "discharge" under Labor Code, section 201, Plaintiff is ineligible to recover penalties under Labor Code, section 203.

NINTH DEFENSE

(No Willful Violation of Labor Code, section 203)

9. Plaintiff's Complaint is barred because Spherion cannot be held to have willfully failed to comply with the requirements of Labor Code, section 201 or 203.

TENTH DEFENSE

(Good Faith Dispute)

10. Plaintiff is not entitled to any Labor Code, section 203, waiting time penalties because a good faith dispute exists as to the monies allegedly owed, such that Spherion cannot be held to have willfully failed to comply with the requirements of Labor Code, section 201.

ELEVENTH DEFENSE

(Due Process)

11. Plaintiff's claims under B&P Code § 17200 *et seq.* violated defendant's constitutional right to due process to the extent the claims do not afford defendant protections against multiple suits and duplicative liability ordinarily provided by class actions.

TWELFTH DEFENSE

(Non-Certifiable Class)

12. The Complaint does not state facts sufficient to certify a class and this action is not properly brought as a class or collective action.

THIRTEENTH DEFENSE

(Claims are Moot)

13. Plaintiff's claims fail because they are moot.

FOURTEENTH DEFENSE

(Failure to Exhaust Administrative Remedies)

14. Plaintiff's Complaint and each and every cause of action attempted to be stated therein are barred to the extent that Plaintiff or other putative beneficiaries of this action have failed to exhaust their administrative remedies prior to commencing this action.

FIFTEENTH DEFENSE

(Remedies at Law)

15. Plaintiff or other putative beneficiaries of this action are not entitled to the equitable relief sought insofar as they, and each of them, have an adequate remedy at law.

SIXTEENTH DEFENSE

(Offset)

16. To the extent that Plaintiff or other putative beneficiaries of this action have received other benefits and/or awards attributable to an injury for which they seek compensation in this case, such benefits and/or awards should offset, in whole or in part, any award they may receive in this action for the same injury.

SEVENTEENTH DEFENSE

(Labor Code 2856)

17. The Complaint and each cause of action attempted to be stated therein are barred in whole or in part to the extent that Plaintiff or any class member or putative beneficiary of this action failed to substantially comply with all the directions of defendant, and such failure proximately caused the alleged losses for which they seek relief.

EIGHTEENTH DEFENSE

(Reservation of Rights)

18. Defendant does not presently know all of the facts and circumstances respecting Plaintiff's claims. Defendant therefore reserves the right to amend this answer should it later discover facts demonstrating the existence of additional affirmative defenses.

PRAYER

WHEREFORE, Spherion Atlantic Enterprises LLC prays for judgment as follows:

1. That Plaintiff take nothing by his unverified complaint;

2. That Plaintiff's request for an order certifying a proposed class is denied;

3. That judgment be entered in favor of Spherion and against Plaintiff on all causes of action;

4. That Spherion be awarded reasonable attorneys' fees, as permitted by statute or contract, according to proof;

5. That Spherion be awarded the costs of suit incurred herein; and

6. That Spherion be awarded such other and further relief as the Court may deem appropriate.

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///

///

DATED: November 13, 2007

SEYFARTH SHAW LLP

By /s/
Samuel T. McAdam
Alfred L. Sanderson, Jr.
Attorneys for Defendants
SPHERION ATLANTIC ENTERPRISE LLC

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF SACRAMENTO)

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Seyfarth Shaw LLP, 400 Capitol Mall, Suite 2350, Sacramento, California 95814-4428. On November 13, 2007, I served the within documents:

ANSWER OF DEFENDANT SPHERION ATLANTIC ENTERPRISE, LLC TO PLAINTIFF'S UNVERIFIED COMPLAINT

☐ I sent such document from facsimile machine (916) 558-4839 on November 13, 2007. I certify that said transmission was completed and that all pages were received and that a report was generated by facsimile machine (916) 558-4839 which confirms said transmission and receipt. I, thereafter, mailed a copy to the interested party(ies) in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed to the parties listed below.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at 400 Capitol Mall, Suite 2350, Sacramento, California 95814, addressed as set forth below.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☐ by placing the document(s) listed above, together with an unsigned copy of this declaration, in a sealed Federal Express envelope with postage paid on account and deposited with Federal Express at Sacramento, California, addressed as set forth below.

Derek J. Emge
Emge & Associates
550 West C Street, Suite 1600
San Diego, CA 92101
(619) 595-1400
(619) 595-1480

David A. Huch
Law Offices of David A. Huch
7040 Avenida Encinas, Suite 104
Carlsbad, CA 92011-4654
(760) 402-9528
(760) 683-3245

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than on day after the date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made.

Executed on November 13, 2007, at Sacramento, California.

Diana Gomez
Diana Gomez

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF SACRAMENTO)

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Seyfarth Shaw LLP, 400 Capitol Mall, Suite 2350, Sacramento, California 95814-4428. On November 13, 2007, I served the within documents:

NOTICE OF REMOVAL OF CIVIL ACTION TO THE UNITED STATES DISTRICT COURT

☐ I sent such document from facsimile machine (916) 558-4839 on November 13, 2007. I certify that said transmission was completed and that all pages were received and that a report was generated by facsimile machine (916) 558-4839 which confirms said transmission and receipt. I, thereafter, mailed a copy to the interested party(ies) in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed to the parties listed below.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at 400 Capitol Mall, Suite 2350, Sacramento, California 95814, addressed as set forth below.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☐ by placing the document(s) listed above, together with an unsigned copy of this declaration, in a sealed Federal Express envelope with postage paid on account and deposited with Federal Express at Sacramento, California, addressed as set forth below.

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I declare that I am employed in the office of a member of the bar of this court whose direction the service was made.

Executed on November 13, 2007, at Sacramento, California.

Diana Gomez
Diana Gomez

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

144514 - BH
* * C O P Y * *
November 14, 2007
15:57:01

Civ Fil Non-Pris
USAO #.: 07CV2178 CIVIL FILING
Judge..: THOMAS J WHELAN
Amount.: $350.00 CK
Check#.: BC# 25270

Total-> $350.00

FROM: MARTINET V. SPHERION ATLANTIC
CIVIL FILING

JS44 - CAND (Rev. 11/04)

VIA FAX

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

FILED 07 NOV 14 PM 3:54 DISTRICT OF CALIFORNIA BY DEPUTY

I.(a) PLAINTIFFS
Philip J. Martinet

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS
Spherion Atlantic Enterprises LLC

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Delaware & Florida
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Derke J. Emge
EMGE & Associates
550 West C Street, Ste. 1600
San Diego, CA 92101
(619) 595-1400

ATTORNEYS (IF KNOWN)
Mark J. Grajski
Samuel T. McAdam
Seyfath Shaw LLP
400 Capitol Mall, Suite 2350, Sacramento, CA 95814
(916) 48-0159

'07 CV 2178 W (AJB)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights
- ☐ 445 Amer w/ disab - Empl
- ☐ 446 Amer w/ disab – Other

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 RR & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☒ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS-Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Satellite TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes
- ☐ 890 Other Statutory Actions

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)
Plaintiff alleges multiple causes of action. See Exhibit A, Complaint attached to Removal.

VII. REQUESTED IN COMPLAINT: ☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND $0.00
CHECK YES only if demanded in complaint: JURY DEMAND: ☐ YES ☒ NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)
(PLACE AND "X" IN ONE BOX ONLY) ☐ SAN FRANCISCO/OAKLAND ☐ SAN JOSE

DATE 11/14/07 SIGNATURE OF ATTORNEY OF RECORD [signature]

PAID 11/14/07 BH RCPT# 144514